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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. [redacted] 45

R. W. PICKERILL AND JULIENNE N. PICKERILL,
Petitioners,

vs.

LEWIS M. SCHOTT, DIRECTOR OF THE BEVERAGE DEPARTMENT OF THE STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

NIXON BUTT,
FRANK J. WIDEMAN,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 742

R. W. PICKERILL AND JULIENNE N. PICKERILL,
Petitioners,

vs.

LEWIS M. SCHOTT, DIRECTOR OF THE BEVERAGE DEPARTMENT OF THE STATE OF FLORIDA,
Respondent

PETITION FOR WRIT OF CERTIORARI

Come now the Petitioners, R. W. Pickerill and Julienne N. Pickerill, by their attorney, Frank J. Wideman, and petition the Court for a Writ of Certiorari, and present to the Court the following:

I. Matter Involved

Section 561.42 (2) Florida Statutes, 1949, provides:

> "Credit for the sale of liquors may be extended to any vendor up to but not including the tenth day after the calendar week within which such sale was made."

The same statute in 561.42 (3) requires the distributors (wholesalers) within three days after the ten (10) day period aforesaid, in the event of non-payment for liquors

purchased on credit, to notify the State Beverage Department.

Thereupon, the State Beverage Department, pursuant to 561.42 (5), without a hearing of any kind being afforded vendor, notifies the vendor and *all* distributors (wholesalers) that no further credit purchases or sales by or to such vendor shall be made.

The ultimate purpose of this petition is to test the constitutionality of 561.42 (2, 3, 4, 5 and 7) Florida Statutes, 1949. The full provisions thereof are as follows:

Sec. 561. 42, Florida Statutes, 1949.

"(2) Credit for the sale of liquors may be extended to any vendor up to but not including the tenth day after the calendar week within which such sale was made."

"(3) In cases where payment for sales to a vendor are not made by the tenth day succeeding the calendar week in which such sale was made, the distributor who made such sale shall, within three days, notify the beverage department in writing of such fact and the beverage department upon receipt of such notice, shall, after compliance with the proceedings hereinafter mentioned, declare in writing to such vendor and to all manufacturers and distributors within the State of Florida that all further sales to such vendor are prohibited until such time as the beverage department shall certify in writing that such vendor has fully paid for all liquors previously purchased."

"(4) Before the beverage department shall so declare, and prohibit such sales to such vendor, it shall, within two days after receipt of such notice, give written notice to such vendor by mail of the receipt by the beverage department of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof, or upon failure to do so, to show cause before the beverage director or one of his designated assistants why further sales to such vendor shall not

be prohibited. Good and sufficient cause to prevent such action by the beverage department may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common law action. The vendor shall have five days after receipt of such notice within which to show such cause and he may demand a hearing thereon, provided he does so in writing within said five days, such written demand to be delivered to the beverage director either in person or by due course of mail within such five days. If no such demand for hearing be made, the beverage department shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the State of Florida that all further sales to such vendor and to all manufacturers and distributors within the State of Florida that all further sales to such vendor are prohibited until such time as the beverage department shall certify in writing that such vendor has fully paid for all liquors previously purchased. If such demand for hearing is made, the vendor shall be entitled to produce witnesses and be represented by counsel. Decision thereon may be made by the director or such designated assistant who has heard the same. In the event no good cause be shown, such prohibition of sales and declaration thereof to the vendor, manufacturers and distributors shall follow five days after such hearing unless the vendor within such time seeks review of such decision by certiorari or any other appropriate remedy to the circuit court of the county wherein the vendor is licensed to do business under the beverage law. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published or declared until final disposition of such review by the courts."

"(5) Upon receipt by the beverage department from the distributor of the notice of nonpayment provided for by subsection (3), above, the beverage department shall forthwith notify such delinquent vendor and all distributors in the State of Florida that no further purchases or sales of liquor by or to such vendor, except

for cash, shall be made until good cause be shown by such vendor as heretofore provided for. No liquor shall be purchased by such vendor or sold to him by any distributor, except for cash, from and after such notification by the beverage department and until such cause be shown as is provided for in subsection (4), next above. In the event no good cause be shown, then all further sales, for cash or credit are hereby prohibited after such declaration in writing by the beverage department is sent to such vendor and distributors and until all delinquent accounts have been paid."

"(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall constitute a violation of the beverage act and any maneuver, shift or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the beverage act."

The Petitioners are vendors in Orlando, Florida, under the State Beverage Act (including 561.42 (2, 3, 4, 5 and 7), Florida Statutes, 1949). The Respondent is the State Beverage Director (R. 1, R. 10 and R. 13).

On October 9, 1951, the Petitioners purchased on credit $640.74 of merchandise from McKesson-Robbins, Inc., a wholesaler, of Jacksonville, Florida (R. 6 and R. 17).

Payment by the Petitioners had not been made for the sole purpose of testing the constitutionality of certain portions of the Act, hereinafter referred to as "the Statute" (R. 7, R. 19, and R. 22). The Petitioners are solvent and enjoy an excellent business and credit reputation. They have been in business in the same location for fourteen years.

On or about October 28, 1951, McKesson-Robbins, Inc., pursuant to the statute, notified the Respondent of the nonpayment of the $640.74 owed it by the Petitioners (R. 2).

On October 30, 1951, the Respondent notified Petitioners that all manufacturers and distributors were prohibited from selling the Petitioners any liquor on credit (R. 6).

This notice was received by the Petitioners on November 1, 1951 (R. 6).

Within five days, Petitioners requested a hearing, assigning as good and sufficient cause that aforesaid order of October 30, 1951, was not in accordance with the property rights guaranteed them by the Constitution of the State of Florida (R. 7).

By letter dated November 8, 1951, the Respondent denied the Petitioners a hearing, stating that their request for a hearing was not based on good and sufficient cause and no question existed to be heard under the statute (R. 8).

At the same time, the Respondent published and declared to the Petitioners, the distributors and the manufacturers that all further sales to the Petitioners for credit or for cash were prohibited until such time as the Respondent shall certify in writing that Petitioners have fully paid to McKesson-Robbins, Inc., the $640.74 (R. 8).

A suit was filed in the Circuit Court in and for Orange County, Florida, on November 13, 1951, or within five days from the date of issuance of the final order of the Respondent dated November 8, 1951, as provided in the statute (R. 1 and R. 10).

The Circuit Court in and for Orange County, Florida, held the act to be constitutional and dismissed Petitioners' bill of complaint with prejudice on November 23, 1951 (R. 11). The Supreme Court of Florida on December 18, 1951, affirmed the decision of the court below (R. 17).

II. Basis for Jurisdiction

The Petitioners state that the basis for the jurisdiction of the Supreme Court of the United States to review the de-

cision of the courts of the State of Florida is 28 U.S.C. 1257 and 2101.

III. Questions Presented

Question No. 1

IS THE LIMITATION OF TEN DAYS' CREDIT AN UNUSUAL AND UNNECESSARY LIMITATION UPON A LAWFUL OCCUPATION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Question No. 2

IS THE STATUTE WITHOUT DUE PROCESS OF LAW BECAUSE THERE IS NO PROVISION FOR A HEARING OF ANY KIND BEFORE THE RESPONDENT IS REQUIRED UNDER THE STATUTE TO DEPRIVE THE PETITIONERS OF THEIR BUSINESS CREDIT, WHICH IS INTANGIBLE PROPERTY? IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

IV. Reasons for Allowance of Writ

The reasons relied on by the Petitioners for the allowance of the writ are that as to Question No. 1, the courts of the State of Florida have decided a federal question of substance not heretofore determined by this Court, and as to Question No. 2, have decided a question probably not in accord with applicable decisions of the United States Supreme Court.

Nixon Butt,
Frank J. Wideman,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION

Reference to Report of Opinion Below

This same case is reported in 55 So. 2nd 716.

Grounds on Which Jurisdiction of U. S. Supreme Court Is Invoked

The Petitioners contend that 561.42 (2, 3, 4, 5 and 7), Florida Statutes, 1949, violates the constitutional guarantees accorded the Petitioners by the Fourteenth Amendment to the Constitution of the United States, and that the basis for jurisdiction is 28 U. S. C. 1257 and 2101.

Statement of the Case

The Petitioners readily and willingly admit that a retail liquor license is merely a privilege granted by the State, pursuant to law under restricted terms and regulations imposed by the State because of injurious effect of use of intoxicants on health and general welfare.

The Petitioners readily and willingly admit that the purpose of the so-called "tied house evil" law contained in 561.42 (1), Florida Statutes, 1949, is to prohibit manufacturers and wholesalers of intoxicating liquors from having any financial interest, directly or indirectly, in retailers of intoxicating liquors, and is to prevent the integration of retail and wholesale outlets, and to remove retail dealers in intoxicating liquors from financial or business obligations to wholesalers, *with exception of ordinary commercial credit for liquor sold.* (See 48 C.J.S. 329.) (R. 20.)

The Petitioners maintain that ordinary commercial credit for liquors sold is not preserved when credit is limited to ten (10) days after calendar week in which sale is made. There was no legislative finding of fact by the Florida Legislature as to what is ordinary commercial credit.

The Petitioners maintain that 561.42 (3), Florida Statutes, 1949, read in conjunction with 561.42 (5), Florida Statutes, 1949, deprives a retailer of business credit, without a hearing of any kind, by an agency of the State (the State Beverage Commission) upon a wholesaler notifying the State agency that the retailer is delinquent in paying his bills under the provisions of the statute. The Petitioners take the position that business credit is a form of property, and as such, is protected by the due process clause of the United States Constitution. Nonetheless, on October 30, 1951, without a hearing of any kind, and upon the simple notice of McKesson-Robbins, Inc., the State Beverage Commission of Florida notified the Petitioners that all manufacturers and distributors were prohibited from selling to the Petitioners on a credit basis, and further notified the Petitioners that the Petitioners were prohibited from purchasing on a credit basis (R. 6).

Assigned Errors

The Petitioners assign as errors:

1. The Supreme Court of Florida erred in not holding that the limitation of ten (10) days' credit is an unusual and unnecessary limitation upon a lawful occupation in violation of the Fourteenth Amendment to the United States Constitution.

2. The Supreme Court of Florida erred in not holding that the statute is without due process of law, because there is no provision of any kind for a hearing prior to deprivation of the business credit of the Petitioners, in violation of the Fourteenth Amendment to the United States Constitution.

VI

ARGUMENT

Question No. 1

Is the limitation of ten days' credit an unusual and unnecessary limitation upon a lawful occupation in violation of the Fourteenth Amendment to the United States Constitution?

This is Petitioners' first assigned error:

As to Question No. 1, is the statute's limitation of ten days' credit an unusual and unnecessary limitation upon a lawful occupation, it is respectfully submitted that it is.

Twenty states have enacted statutes aiming at the "tied house evil". Of these, eight (8) states have enacted provisions in their statutes using the weapon of limitation of credit in prohibiting the "tied house" and setting forth time limitations. Of these eight (8) states with limitation of credit provisions, Florida has the most drastic limitation of only ten (10) days after the calendar week in which the sale was made. Of the other seven (7) states which have statutory provisions for limitation of credit, ordinary commercial credit is more nearly preserved, with the possible exception of Indiana which allows only fifteen (15) days, which statutory provision has not been the subject of judicial scrutiny. The credit periods for these other seven (7) states are as follows:

Massachusetts	—	Up to ninety (90) days
New York	—	Up to forty-one (41) days
Connecticut	—	Up to thirty (30) days
Illinois	—	Up to thirty (30) days
New Jersey	—	Up to thirty (30) days
Rhode Island	—	Up to thirty (30) days
Indiana	—	Fifteen (15) days

48 C.J.S., page 329, states the following as to regulatory acts aimed at the so-called "tied house evil":

"Business Relations Between Retailers And Manufacturers Or Wholesalers. Effect has been accorded to federal and state statutes making it unlawful for manufacturers or wholesalers to have an interest in retail liquor stores, to loan money or extend credit, for a period in excess of thirty days, to a retailer, or to offer or give a bonus, premium, or compensation to an officer, employee, or representative of the buyer to induce the buyer to purchase from the seller to the exclusion of goods of competitors; or to statutes containing other provisions of like character respecting business relations between retailers and manufacturers or wholesalers. Statutes of this nature are aimed at the evil known as the "tied house"; and their purpose is to prevent the integration of retail and wholesale outlets and to remove the retail dealer in intoxicating liquors from financial or business obligations to the wholesaler, with the exception of ordinary commercial credit for liquors sold."

The Supreme Court of the United States in *Lawton* v. *Steele,* 152 U. S. 137, 14 S. Ct. 501, condemns unusual and unnecessary restrictions. The Court said:

> "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the *public generally,* as distinguished from those of a particular class, require such interference, and, second, that the means are *reasonably necessary* for the accomplishment of the purpose, and not unduly oppressive upon individuals. The Legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose *unusual* and unnecessary restrictions upon lawful occupations."

QUESTION No. 2

Is the statute without due process of law because there is no provision for a hearing of any kind before the respondent is required under the statute to deprive the petitioners of their business credit, which is intangible property in violation of the Fourteenth Amendment to the United States Constitution?

As to Question No. 2, is the statute without due process of law because no hearing is provided before the deprivation of business credit, which is intangible property . . . it is respectfully submitted that it is.

561.42 (3), Florida Statutes, 1949, read in conjunction with 561.42 (5), Florida Statutes, 1949, reads as follows :

> "(3) In cases where payment for sales to a vendor are not made by the tenth day succeeding the calendar week in which such sale was made, the distributor who made such sale shall, within three days, notify the beverage department in writing of such fact and the beverage department, upon receipt of such notice, shall, after compliance with the proceedings hereinafter mentioned, declare in writing to such vendor and to all manufacturers and distributors within the State of Florida that all further sales to such vendor are prohibited until such time as the beverage department shall certify in writing that such vendor has fully paid for all liquors previously purchased."
>
> • • • • • • •
>
> "(5) Upon receipt by the beverage department from the distributor of the notice of nonpayment provided for by subsection (3), above, the beverage department shall forthwith notify such delinquent vendor and all distributors in the State of Florida that no further purchases or sales of liquor by or to such vendor, except for cash, shall be made until good cause be shown by such

vendor as heretofore provided for. No liquor shall be purchased by such vendor or sold to him by any distributor, except for cash, from and after such notification by the beverage department and until such cause be shown as is provided for in subsection (4), next above. In the event no good cause be shown, then all further sales, for cash or credit are hereby prohibited after such declaration in writing by the beverage department is sent to such vendor and distributors and until all delinquent accounts have been paid."

Clearly and definitely there is no hearing provided before the business credit of the retailer is abolished (R. 6). This is done without a hearing, but upon the single notification by *a wholesaler* that a certain retailer owes him money and has owed it longer than ten days following the calendar week in which the sale was made (R. 6). The order abolishing the business credit issues immediately (R. 6). A hearing is provided later, if within five (5) days the retailer requests a hearing and shows good cause as defined by the statute (R. 2, 3, and 6). In the meantime, while waiting for a hearing the retailer is deprived of his business credit. The Petitioners were thus deprived of their business credit without a hearing by order of the State Beverage Department issued on October 30, 1951, upon notification from the wholesaler, McKesson-Robbins, Inc., on or about October 28, 1951, that the Petitioners owed money to McKesson-Robbins, Inc. (R. 6).

73 C. J. S., 454, states as follows:

"While broad statements have been made to the effect that notice and hearing are essential to the validity of an administrative proceeding, the need for notice and hearing within the administrative process depends in some measure on the extent to which the action taken is subject to judicial review, and it has been held that notice and hearing within the administrative proceedings may not be necessary where there is adequate pro-

vision for judicial review, as where there is a provision for a full hearing de novo by the courts, *unless there is no provision for a stay pending judicial review and irreparable injury may result.*"

Petitioners admit that 561.42 (4), Florida Statutes, 1949, provides for a hearing after the business credit has been abolished by 561.42 (3) and 561.42 (5), Florida Statutes, 1949. Petitioners admit that 561.42 (4) provides for judicial review of the hearing, and a stay of the determination made at the hearing. But, the Petitioners respectfully point out to the Court that *nowhere in the statute is there a stay pending judicial review of the abolishment of the business credit as is ordered immediately by the Beverage Department pursuant to 561.42 (3) and 561.42 (5).* There is a stay of one penalty (determined at the hearing) but no stay of the other (determined without hearing). If judicial review is sought of determination made at hearing, there is simply *no further* publication of prohibition of sales. (561.42 (4) Florida Statutes 1949.

Judicial review in the normal procedure is time consuming, and being deprived of business credit will in the usual case cause irreparable injury (R. 4 and R. 5). This lack of a stay is contrary to the deciison of the United States Supreme Court in *Porter* v. *Investors Syndicate,* 52 S. Ct. 617, 286 U. S. 461, 76 L. Ed. 1226, affirmed 53 S. Ct. 123, 287 U. S. 346, 77 L. Ed. 354, in which the Court stated:

"Where as ancillary to the review and correction of administrative action, the state statute provides that the complaining party may have a stay until final decision, there is no deprivation of due process, although the statute in words attributes final and binding character to the initial decision of a board or commissioner. But where either the plain provisions of the statute or the decisions of the state court interpreting the act precludes a supersedeas or stay until the legislative process

> is completed by the final action of the reviewing court, due process is not afforded, and in cases where the other requisites of federal jurisdiction exist recourse to a federal court of equity is justified."

We respectfully submit that the provisions of 561.42(3) in conjunction with 561.42(5), Florida Statutes, 1949, preclude a supersedeas or stay until the legislative process is completed by the final action of the reviewing court, and therefore due process is not afforded as required by the Fourteenth Amendment to the United States Constitution.

NIXON BUTT,
FRANK J. WIDEMAN,
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versus

LEWIS M. SCHOTT, Director of the Beverage Department of the State of Florida,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

WM. JOE SEARS, JR.,
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SUPREME COURT OF THE UNITED STATES
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No. 742

R. W. PICKERILL and JULIENNE N. PICKERILL,
Petitioners,

versus

LEWIS M. SCHOTT, Director of the Beverage Department of the State of Florida,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Florida Supreme Court (R. 27-17) is reported at 55 So. (2d) 716. The State Reporter citation is not yet available.

QUESTIONS PRESENTED

1. There being no conflict among state or other Courts on the points of law raised in the Petition, and the ques-

tions raised not being of great public interest, should the Court entertain certiorari?

2. Is a Florida statute prohibiting the "tied-house" among retail and wholesale liquor dealers violative of the 14th Amendment in limiting credit to ten days after the calendar week in which sale is made?

3. Is such a Florida statute violative of the 14th Amendment in providing that those retailers who violate such credit restrictions may purchase only for cash until good cause for such non-payment is shown?

STATUTE INVOLVED

Petitioners quoted Subsections 2, 3, 4, 5 and 7 of 561.42, Florida Statutes, 1949, in their brief (pp. 2-4), but omitted Subsection 1, which we believe to be most important in the consideration of this case, since the other subsections are merely supplemental to the prime objective contained in Subsection 1. This section provides that:

> "(1) No licensed manufacturer, or distributor, of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the beverage law, nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any de-

scription or any rebates from any such licensed manufacturer or distributor; provided, however, that this shall not apply to any bottles, barrels or other containers necessary for the legitimate transportation of such beverages, or advertising materials, and shall not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section."

STATEMENT

This is a case instituted by Mr. and Mrs. Pickerill, retail liquor dealers, in the Circuit Court for Orange County, Florida, to test the constitutionality of certain Subsections of Section 561.42, Florida Statutes Annotated, known as the "Tied House Evil" law. This law prohibits manufacturers and wholesalers from having any financial interest in retailers, directly or indirectly, and, further, limits the extension of credit to retailers to ten days after the calendar week in which the sale is made. Where payment is not made within such time, the wholesaler involved is required to report such delinquency to the Beverage Department within three days. The Beverage Department is then required to notify the delinquent retailer of the receipt of such notice and to pay such delinquent accounts, or, on failure to pay, to show cause before the Beverage Director or his assistants why same should not be paid or further sales to him prohibited. The law goes on to provide that "good and sufficient cause to prevent such action by the beverage department may be made by showing payment, failure of consideration, or

any other defense which would be considered sufficient in a common law action." The retailer is allowed five days within which to show such cause in writing and to request a hearing. He is restricted to cash sales during the interim. If he fails to show cause, further sales (both cash and credit) are prohibited. Provision is also made for review of the decision of the Beverage Department where "good and sufficent cause" is attempted to be shown and the ruling is adverse. If such review is sought within five days "after such hearing," prohibition of sales is suspended until the review or appeal is disposed of.

Petitioners admitted that they were indebted for liquors purchased in excess of the statutory period. There is no contention that they had a defense to payment of the bill. However, within five days after being notified of their delinquency, they did notify the Beverage Department that they contended that the credit law was unconstitutional and requested the Director to give them a hearing on that point. The Director denied the hearing since no defense to payment of the claim had been made.

Petitioners, the Pickerills, then filed suit in chancery in the Orange County Circuit Court for injunction, claiming the law to be violative of the Florida and United States Constitutions. The law was upheld by the Circuit Court and by the Florida Supreme Court. Petitioners here seek review of the Florida Supreme Court decision.

In the meantime, the Pickerills have paid up their accounts and are no longer delinquent. They now have

the same right to purchase on credit as other retail liquor dealers do.

ARGUMENT

1. Petitioners should not here be heard to contend that they were deprived of a hearing before they were deprived of credit, since it clearly appears that they deliberately incurred the debt that gave rise to suspension of credit and that they had no legal defense to its payment.

Had the petitioners claimed a defense as provided for in 561.42 (4) F. S. A., and been deprived of credit pending determination of such claim, then petitioners would be in a position to raise such a constitutional question, even though it be without merit. However, they had no such defense and boldly assert that "Payment by the petitioners had not been made for the sole purpose of testing the constitutionality of certain portions of the Act." (See Petitioners' Brief, p. 4.)

While this was no doubt their purpose, nevertheless they had no legal defense to the bill incurred and consequently were not entitled to a hearing thereon by the Beverage Director, under the provisions of the statute. The only question that they could raise was the validity of the ten-day credit limitation contained in the statute.

2. Certiorari should not be entertained herein because there is no conflict among the cases wherein the constitu-

tionality of similar statutes have been considered. Nor is the question one of sufficient public interest to warrant consideration by this Court on certiorari.

The "tied-house evil" statutes have been adopted by many of our states and by the Federal law as a means of regulating the liquor industry. They have generally been held to be constitutional. 48 C. J. S. 329; 30 Am. Jur. 30 (1951 Pocket Part).

Similar statutory credit limitations on the sale of liquor have been unanimously upheld in all cases where they have been considered. *Sullivan v. Cann's Cabins*, 36 N. E. (2d) 371, 309 Mass. 519, 136 A. L. R. 1236; *Sepe v. Daneker*, 68 A. (2d) 101, 76 R. I. 160; *State v. Zazzaro*, 20 A. (2d) 737, 128 Conn. 160; *Weissberg v. Taylor*, 100 N. E. (2d) 748, 409 Ill. 384 (1951). The same contentions raised here were discussed in those cases and overruled. We have been unable to find a case holding to the contrary and counsel for petitioners have likewise failed to cite one.

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas and Wisconsin are states that have similar laws and restrictions on sales varying from cash only, to thirty days' or more credit. The Federal law contains a thirty day credit limitation. Tennessee, Texas, Illinois and Florida are among those where credit sales are prohibited on violations under like regulations. Whether the limitation be for cash only, thirty days credit or ten, is one

resting peculiarly within the wisdom and discretion of the legislature and within the police power of the State

3. The several states are vested with power to regulate the sale and traffic in liquor in the manner and to the extent of the Florida Statutes here involved.

The several cases cited above contain excellently reasoned and written opinions wherein the constitutional questions raised in this proceeding were decided adversely to petitioners.

The following principles of law relating to intoxicating liquors are fundamental:

> "From the earliest times it has been found expedient to control, not only the use of intoxicating liquors, but more especially the traffic therein. Such control is justified under the police power. It embraces both regulatory and prohibitory measures."
>
> "The form of control is a matter for the state to decide as a question of public expediency and norality." 30 Am. Jur. 260 and 261.

Scott v. Donald, 165 U. S. 58, and *Crowley v. Christensen*, 137 U. S. 86, enunciate similar statements of the law.

> "Since the matter of liquor control is referable to the police power,—a power that has resided principally in the states since the beginning of the pesent system of Government, and was not surrendered to the Federal Government,—the entire subject is within the power of the states, except in so far as their authority is limited by that vested in the Federal Government. The power of a state with respct to

intoxicating liquors is said to exist as a correlative of its duty to support paupers, to protect the community from crime, and to confine and maintain the criminal, since the liquor traffic is a source of pauperism and crime. The right of a state to regulate the intrastate manufacture, possession, sale, transportation, or use of intoxicating liquors, imposing such conditions, restrictions, and limitations thereon as the legislature may deem proper, or to prohibit such manufacture, possession, sale, transportation, or use entirely, is now a matter of universal recognition based on a long line of decisions both Federal and state. Moreover, the Twenty-first Amendment to the Federal Constitution sanctions the rights of the states to legislate concerning intoxicating liquors brought from without the state, unfettered by the commerce clause of the Federal Constitution. A state may now absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority with respect to them. The power of a state to enact a prohibitory statute cannot be stayed by entering into a contract for the purchase of intoxicating liquors after the passage of the law.

"A state, in the exercise of its undoubted power to protect its people against the evils incident to traffic and the use of intoxicants, may exercise large discretion as to means employed. Subject to such restrictions as the state Constitution may prescribe, it is a matter exclusively within the discretion of the state legislature to decide the form of liquor control, whether regulation or prohibition, and having decided, it may adopt such measures as are reasonably ap-

propriate or needful to render such control effective. In the absence of constitutional prohibitions, the legislature has the power to pass any statute on the subject or to make any reasonable regulation which it may deem proper for the welfare of the state. The scope and extent of such regulations depend solely upon the judgment of the lawmakers, with the wisdom of which the judiciary has no concern, provided, always, that they do not transcend the limits of state authority by invading rights which are secured by the Constitution of the United States, and provided further that the regulations adopted do not operate a discrimination against the rights of residents or citizens of other states." 30 Am. Jur. 270-271.

"The right to sell intoxicating liquors is not one of the privileges and immunities of citizens, within the meaning of the Fourteenth Amendment to the United States Constitution, from which it follows that a state law regulating or prohibiting the selling of liquors is not in violation of such amendment. Such prohibition is not within the constitutional provision against the taking of property without compensation or due process of law, although the effect is to destroy previously recognized property." 30 Am. Jur. 399.

These principles are substantially reiterated by the following cases decided by this Court: *Ziffrin v. Reeves*, 308 U. S. 132; *Crane v. Campbell*, 245 U. S. 304.

We therefore respectfully submit that the Petition for Certiorari should be denied.

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